IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 6582 of 2005

GRAM PANCHAYAT,MATUNG & ORS.
V/S
STATE & ORS.

Mr. PS BHATI, for the appellant / petitioner

Mr. RAJESH JOSHI, Mr.JAGAT TATIYA for Mr.MANISH SHISHODIA, for the respondent

Date of Order : 28.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

Heard learned counsel for the parties.

By this public interest litigation, the petitioners claimed reliefs, being firstly, to restrain the respondent No.2 from polluting the water and surroundings, and also from indiscriminately using the water from the precious water resource of Udaisagar. The other relief claimed is, that the State Government be directed to review, reconsider, all its policy pertaining to permission of indiscriminate use of water for industrial purposes from natural resources; and the third being, for issuance of direction to make comprehensive futuristic plan for equitable distribution of water, and restrictive use by the respondent No.2. Then priorities in the matter of water distribution have been claimed.

The factual matrix, for the relief claimed is, that the respondent No.2 is an industrial establishment, which was earlier owned by the government, and according to the averments of the writ petition, at that time, the exploitation of water was minimum, with the due care being taken by the respondent No.2, while the advantages were many as the social welfare activities of respondents were considerable. However, after taking over of the respondent No.2 by the private persons, the social activities have stopped to a very large extent. Then it is alleged, that the respondent No.2 is going ahead with producing environmentally hazardous substances, like sulphuric Acid alongwith Zink Acid, Lead and Copper. The nature of production has serious effect upon the environment, and water resources, as not only the release of deadly industrial wastes, but also indiscriminate consumption of water. The industrial waste remains at the outskirt, and percolates into the ground, causing serious pollution, and damage to the ground water. Then the averments are made about the excavation of tube wells by the respondent No.2 indiscriminately, and bringing about a drought situation.

Replies have been filed on behalf of different respondents. In the reply, filed by respondent No.2, it is contended, that the establishment was established way-back in the year 1966, by installation of the Zink Smelter

Plant, with an object of development of area, and produce Zink to meet the national requirements, and to generate the employment, and financial resources for the society. For this purpose, the State Government facilitated, and entered into a contract with the erstwhile entrepreneur, Metal Corporation of India Ltd., and according to that agreement, the government was to supply water from Udaisagar lake to Zink Smelter, Debari, the said agreement was executed on 10.12.1963, and the agreement being in the public interest cannot be said to be contrary to public interest. Then it is contended, that in pursuance of that agreement, the water is being supplied to the answering respondent since then. It is alleged that this agreement was renewed from time to time. Then regarding indiscriminate user of water, and inequitable distribution, it is contended, that it is only bald averment, rather as a matter of fact, the water is being distributed as per the recommendations of the Water Distribution Committee, constituted under the Chairmanship of the District Collector, Udaipur, and 18 other members, by their unanimous decision, for utilisation of water amongst the beneficiaries of the lake, including the answering respondent, and the farmers at large, of notified command area as such, there is no inequitable and in-discriminatory distribution of water. Then replying the averments about discharge of social responsibilities, it is pleaded, that the answering respondent, even after privatisation, is continuously discharging its social

responsibilities and water is being drawn in accordance with the agreement, for which the charges raised by the Irrigation Department are being paid. Then it is pleaded that the social responsibilities are being discharged alike, as before disinvestment, and after disinvestment as well. The details of the activities have been given in Annex.R/2/4. Then regarding pollution, it was pleaded, that there is no production of Lead and Copper, and there is no acid known as Zink Acid. Thus, it is pleaded, that the allegation is wholly wrong, and it is also pleaded, that no industrial affluent water is drained by the answering respondent. Other allegations of the writ petition were also denied. Then in the reply filed by the other respondents also it is specifically pleaded, that there is no existing scheme for providing drinking water from Udaisagar lake, as it is not a reliable lake, and that, the water can be used only for the industrial and irrigation purposes. It is pleaded that Public Health & Engineering Department has not approved the water for being provided for drinking purposes, and the various Panchayats and Panchayat Samitis had never received water from Udaisagar lake, rather they are receiving water from other sources. It was pleaded, that the distribution of water for irrigation purposes is decided by the Committee, and the petitioners No.2 and 9 are also members of this Committee. The year-wise details about the use of water for industrial purposes, and irrigation purposes, have been given as

Annex.R/3, while the order of the State Government constituting Water Distribution Committee has also been produced. Then the allegation about pollution was denied, and it was pleaded, that no industrial wastage of the Hindustan Zink Ltd., can be drained into the said lake, as the plant of the industry is situated at about 3-4 kms. distance, down stream of the Udaisagar lake, at lower altitude, therefore, the drainage of polluted industrial wastage into the Udaisagar Lake is not possible at all. Then various figures of water distribution have been given.

No rejoinder has been filed. However, an additional affidavit has been filed, seeking to produce the Water Chemical Analysis Report, and the Analysis report of Trace Heavy, as Annex.4 and 5, to show the quality of subsoil water of the surrounding areas claiming it to be polluted. A reply to this additional affidavit has been filed on behalf of the respondent No.2, contending inter-alia, that the petitioner has not shown relevance of these documents, or the source, from where he has obtained the copy of the above documents. It is also pleaded, that the report is issued with reference to drinking water, but in the reply it has already been pleaded, that Udaisagar Lake is only used for industrial and irrigation purposes, and therefore, the Water Chemical Analysis has no nexus. Then regarding report of heavy chemical trace, it is pleaded, that it is not reliable, for the simple reason, that the

sample point shown in the report are not the sample points of Udaisagar Lake, apart from the fact, that the petitioner has not described the relevancy thereof qua the answering respondent. It is also contended, that the Pollution Control Board has taken the sample near the respondent No.2, from the final discharge of the industry, and in the said report, no allegation about pollution has been found. This is the report of the Junior Scientist Officer, Regional Laboratory, Rajasthan State Pollution Control Board, dated 25.11.2006, and has been produced as Annex.R/2/6.

We have heard learned counsels appearing for the parties, and have gone through the pleadings, and the documents.

In our view, may be that the pollution is very important circumstance, inasmuch as, if the pollution is being caused by the respondent No.2, industry, then the matter is required to be taken seriously, and all steps are required to be taken to control the pollution, rather abate the same, but then, it has to be found, firstly, that the pollution is being caused, and secondly, that this being caused by the respondent No.2.

In the present case, as has come on record, that so far water of Udaisagar Lake is concerned, it is the

categoric stand of the respondents, that the water is not fit for drinking purposes, and is not being used as such, at all, rather the water is fit only to be used for industrial purposes, and irrigation purposes. Secondly, it has also been pleaded by the respondents No.1 and 3, that the factory of respondent No.2 is located at a distance of 3-4 kms., down stream Udaisagar, and at a lower altitude. Obviously, with the result, that it is inconceivable, that any affluent of the respondent No.2 is being drained out to Udaisagar Lake. Then so far as the industrial wastage being discharged by the respondent No.2 is concerned, a look at the pleadings contained in para 6 of the petition, and reply of the respondent No.2, shows, that it appears, that the allegation has been made without any basis, while the petitioner has pleaded that the respondent No.2 is manufacturing Zink Acid, Lead and Copper, while according to the respondent, Lead and Copper is not manufactured by them, and there is no substance known as Zink Acid. So far the Sulphuric Acid is concerned, it is pleaded to be manufactured by the respondent, but then, it is not the averment in the writ petition, that the said Sulphuric Acid is being discharged, in any such a manner, as may be causing any pollution, as complained of, and it is not shown, that manufacturer of Sulphuric Acid, by itself, can cause pollution of subsoil water. In such circumstances, the mere fact, that the respondent is manufacturing Sulphuric Acid, it cannot be said, that any pollution is

being caused. So far as the documents Annexure-4 and 5, produced with the additional affidavit is concerned, firstly it is not shown therein, that the water samples taken are polluted, as contemplated by the petitioner, secondly, even if it is assumed that the water is polluted to a very minimal extent, it is not shown, that the respondent No.2 is in any manner responsible for that pollution, as it is not shown, that any industrial affluent, being discharged by the respondent No.2 is discharged at a point, or in a manner, so as to percolate into the ground, causing any pollution and/or damage to the ground water, which might have caused the complained pollution. On the contrary, the respondent No.2 has produced the report from the Pollution Control Board, which rather negatives the pleadings taken by the petitioner, about the discharge of industrial waste to be causing pollution. Thus, in our view, it cannot be said, that the grievance on the basis of pollution, raised against the respondent No.2, requires any interference by this Court in this public interest litigation.

So far as the excessive use of water is concerned, it is clear from the agreement produced by the respondent No.2, being Annex.R/2/5, that there was specific agreement between the State Government and the erstwhile Metal Corporation of India, entered into way-back in 1963, and was renewed from time to time, whereunder an obligation was

taken to supply water for the respondent No.2, and accordingly the water has been received by respondent No.2. There is no occasion for us to interfere with the said agreement, which had been entered into more than 4 decades ago. That apart, it has clearly been placed on record, on the side of the respondents, that there is a Water Distribution Committee, duly constituted by State, which comprises of some of the petitioners also, and which is headed by the District Collector of the concerned district, and the matter of distribution of water is decided by the said committee, by a unanimous decision, every year. Over and above all this, the respondent No.2 has specifically pleaded, that it is drawing only 10 M.C.F.T. of water per month, i.e. about 120 or 125 M.C.F.T. per year, as against the available water in the lake, being 800 M.C.F.T., rest of the water is always available for irrigation, and is accordingly distributed by the Water Distribution Committee. In that view of the matter, it cannot be said, that there is any indiscriminate exploitation of water by the respondent No.2, so as to require any interference in public interest litigation, by this Court.

So far as the contention about discharge of social obligation of the respondent No.2 is concerned, the pleadings in this regard, in the writ petition, also are as vague as they could be, apart from the fact, that the respondent No.2, in the reply has clearly maintained, that

they are discharging the social obligations, as were being discharged hitherto-fore before disinvestment. This, apart from the fact, that against the private company we do not feel advised to go into the question, about any such liability being there, to discharge any social obligation of the neighbouring villages, requiring interference in public interest litigation.

Thus, taken from any standpoint, we do not find any merit in the writ petition. The same is, therefore, dismissed summarily.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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